**BELLSOUTH**

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

David Furth, Chief
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
2100 M Street, N.W., Room 700
Washington, D.C. 20554

Re: WT Docket No. 95-157
Opposition to Request for Clarification

Dear Mr. Furth:

BellSouth Corporation, on behalf of its wireless affiliates and subsidiaries, hereby responds to a request for clarification filed by Kraskin & Lesse, LLP ("Kraskin") on behalf of unnamed C Block PCS licensees. According to Kraskin, the Commission should "clarify" that, under the microwave relocation cost-sharing rules, a PCS licensee is entitled to obtain the identity of all parties that have filed agreements to relocate incumbent 2 GHz microwave paths ("Relocators") within its market, as well as information relating to the cost and scheduling of the relocations, *prior* to filing a prior coordination notice ("PCN"). As shown below, there is no need for clarification.

The Commission's cost-sharing rules are very clear. A PCS licensee is not entitled to a list of all Relocators within its market, and it is not entitled to cost information *before* it files a PCN. The process works as follows:

> a PCS licensee obtains reimbursement rights for a particular link on the date that it signs a relocation agreement with the microwave incumbent operating on the link at issue. Within ten business days of the date the agreement is signed, the PCS licensee submits documentation of the agreement to a non-profit clearinghouse . . .
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> Prior to commencing commercial operation, each PCS licensee is required to send a prior coordination notice ("PCN") to all existing users in the area. At the same time, each PCS licensee shall file a copy of the PCN with the clearinghouse. The clearinghouse will then apply an objective test to determine whether the proposed base station would have posed an

interference problem to the relocated link.[1]

Thus, a subsequent PCS licensee obtains cost-sharing information *only* upon the filing of a PCN. PCS licensees should not be entitled to any information prior to filing a PCN.

Moreover, the cost-sharing rules do not require a clearinghouse or Relocator to supply information regarding the schedule for relocating microwave paths. Such information would provide subsequent PCS licensees with proprietary, competitively sensitive information related to the PCS deployment planned by the Relocator. Subsequent PCS licensees would be able to determine the planned capacity and similar information relating to the Relocator's PCS system if relocation schedules were made available. This information is highly confidential in nature and should not be publicly available. Requiring this information to be made available to competitors at the very time the competitors are planning their system configurations would be highly anticompetitive. Subsequent PCS licensees should not be permitted to engage in system design based on the confidential plans of a Relocator. Kraskin provides no substantive reason for requiring that such information be made available to subsequent PCS licensees.

If relocation scheduling information were made available to subsequent PCS licensees, such licensees could unfairly minimize their reimbursement obligations. Subsequent licensees would be able to design around the proximity threshold of paths subject to relocation agreements. Such action would create new "free rider" problems of the sort the Commission was attempting to eliminate by adopting cost-sharing rules.[2] It would be inconsistent with existing policy and rules to issue "clarifications" that would now permit subsequent PCS licensees to design around relocated paths in order to avoid a reimbursement obligation.

Under Kraskin's proposed "clarifications," a PCS licensee would be entitled to information prior to filing a PCN. Nothing in the Commission's rules requires the clearinghouse or a Relocator to disclose information to another PCS licensee before the licensee submits a PCN to the clearinghouse. Accordingly, because there is no rule to clarify, Kraskin's "clarification" request is an untimely petition for reconsideration.

The Commission conducted a full rulemaking on cost-sharing issues and made many compromises in developing its cost-sharing rules. BellSouth and others argued that

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1 *Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation*, WT Docket No. 95-157, *First Report and Order*, 11 F.C.C.R. 8825, 8862 (1996) ("*First Report*").

2 *Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation*, WT Docket No. 95-157, *Notice of Proposed Rulemaking*, 11 F.C.C.R. 1923, 1931 (1995) ("*NPRM*"); *First Report*, 11 F.C.C.R. at 8861.

reimbursement rights should only be acquired once the microwave path is relocated and the Relocator commenced commercial operations.[3] In the interest of administrative simplicity, however, the Commission adopted rules under which reimbursement rights were acquired on the date on which parties entered into a relocation agreement.[4] Similarly, although the Commission agreed that reimbursement payments should be made by subsequent PCS licensees once they commence commercial operations, the Commission tied the payment obligation (and ability to obtain cost-sharing data) to the filing of a PCN, rather than commercial operations.[5] The Commission cannot change these carefully crafted obligations without initiating a new rulemaking, which clearly is not justified simply because some C Block PCS licensees wish to shift cost burdens further onto Relocators' shoulders, while also obtaining detailed access to Relocators' deployment plans.

Finally, Kraskin urges the Commission to "clarify" that a subsequent PCS licensee may renegotiate a relocation agreement to which it was not a party in order to obtain an earlier date for relocating a microwave path. Kraskin also claims that any costs associated with such a renegotiation should be shared pursuant to the cost-sharing formula. BellSouth has no objection to permitting subsequent licensees to enter into negotiations with parties to a relocation agreement in an effort to obtain an earlier relocation date. The Commission has indicated, however, that (i) payments made for the sole purpose of expediting relocation constitute premiums, and (ii) premiums are not compensable under the cost-sharing rules.[6] Accordingly, any compensation paid to the incumbent in return for agreeing to relocate on a more expedited basis should not be shared among PCS licensees.

In sum, clearinghouses and Relocators should not be required to supply the information sought by Kraskin because it would permit subsequent PCS licensees to "game" the process and

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3 *Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation*, WT Docket No. 95-157, *First Report and Order*, Appendix A, 11 F.C.C.R. 8825, 8881 (1996)("*First Report, App. A*").

4 *First Report, App. A*, 11 F.C.C.R. at 8882-83.

5 *First Report, App. A*, 11 F.C.C.R. at 8896

6 BellSouth and other A and B Block PCS licensees also hold D and E Block PCS licenses. Thus, any burdens imposed on C Block licensees by the cost-sharing rules are also indirectly imposed on A and B Block PCS licensees.

thereby create new free rider problems of the sort the cost-sharing rules were designed to eliminate. Subsequent PCS licensees should be permitted to renegotiate relocation dates, but any compensation paid for a new relocation date must be excluded from cost-sharing.

Respectfully submitted,

BELLSOUTH CORPORATION

By: 
David G. Frolio